

S.B. CIVIL MISC. APPEAL NO.1457/2006

(Mangilal & Ors. Vs. Modern Auto Traders & Anr.)

Date of Order :: 12th January 2007.

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Dilip Kawadia, for the appellant.

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For quantification of compensation to be awarded to the parents, sisters and brother of the vehicular accident victim Mahendra, said to be about 20 years in age, the Tribunal has noticed the submissions of the claimants about the deceased pursuing his studies in second year Arts and earning Rs. 5,000/- per month from a grocery shop and another Rs. 2,000/- by way of tuitions; and for want of any cogent evidence on record, has estimated his monthly income at Rs. 1,800/-; has provided for a component of future prospects taking his average monthly income at Rs. 2,100/- and deducting one-third wherefrom and with application of multiplier of 15 has assessed pecuniary loss at Rs.2,52,000/-. The Tribunal has further allowed Rs. 5,000/- to each of the five claimants towards non-pecuniary loss and Rs.2,000/- towards funeral expenses and has thus awarded compensation in the sum of Rs. 2,79,000/- together with interest @ 6% per annum from the date of filing of claim application.

It has been contended by learned counsel that the Tribunal has erred in not taking income of the deceased at Rs. 7,000/- as asserted by the claimants though there is no rebuttal on record; has erred in applying lower side multiplier; and has further erred in not providing for reasonable element of future prospects despite the deceased being in the young age of about 20 years only.

Having considered the submissions and having perused the record this Court is satisfied that this appeal for enhancement of amount of compensation does not merit admission.

The deceased was an undergraduate student and so far his earnings from a grocer's shop or by way of tuitions is concerned, there is no material on record to corroborate the bald assertion of the claimants. The deceased being not in any settled job or employment though no increase in the estimated income in the name of future prospects seems appropriate but in any case, the Tribunal has taken ultimate figure of annual average income at Rs. 2,100/- that cannot be considered inadequate or insufficient from any stand point. Examined from other angle, if the deceased was at all earning from a grocer's shop, a part of the business income retains itself to the claimants and again, the average estimated income for the

purpose of assessing loss of contribution could only be taken reasonably at Rs. 2,100/- per month and not beyond.

Then, taking of entire of two-third of the estimated income of the deceased has only led to higher multiplicand towards loss of contribution for the claimants. The deceased being an unmarried person, looking to the future certainties and uncertainties, chances of his getting married and larger part of his income getting diverted to his own family cannot be ruled out. In the circumstances of the case, not more than one-half of the estimated income of the deceased could have been taken towards pecuniary loss for the claimants. Viewed from any angle, the multiplicand adopted by the Tribunal at Rs. 16,800/- per annum cannot be said to be inadequate or on the lower side.

Having perused the statement of the father of the deceased, examined as AW-2 in consolidated trial of two claim cases, this court is satisfied that the claimants have not been forthright in their submissions while claiming compensation. Father of the deceased would assert that he was having only one bigha of land; and that he was earning nothing but Rs. 2,000/- per annum. In the family set up that consisted of six persons including the deceased; and with three other children studying, it does not sound convincing that the head of family, though not under any disability, was simply not doing anything

at all. Further, the Tribunal has rightly commented that the age assertion on the part of the claimants is not correct. AW-2 Mangilal has stated that Mahendra (deceased) was born 2 years after his marriage; that his wife was about 20-22 years of age at the time of birth of Mahendra; and that his wife was 5 years younger to him. When the deceased was 20 years of age at the time of accident (date being 22.11.2002), going by the statement aforesaid, age of the mother of the victim stands at about 40-42 years and that of the father at about 45-47 years. AW-2 has stated his age at 41 years in his statement recorded on 20.10.2004; and the age of parents has been stated at 39 years (father) and 35 years (mother) in the claim application. It is evident on the face of the record that the claimants have not come out with correct facts in relation to their age; and the material difference puts a serious question mark over their trustworthiness.

The provisions of beneficial legislation like the one dealing with compensation for vehicular accidents are meant for support of bonafide claimants; and any attempt on the part of the claimants of making incorrect assertions on the material aspects like the relevant age and earnings could only be treated as aiming for profiteering in the name of claim for compensation and to misuse the sympathy of the Tribunals and the Courts; and has always been viewed with disfavour. In

the circumstances of the case, though the Tribunal has taken the age of the parents of the deceased at about 40-45 years and applied the multiplier of 15, even such choice of multiplier appears to be on the higher side.

With the choice of higher multiplier and adopting of excessive multiplicand, assessment of pecuniary loss itself has been much in excess of the reasonable amount admissible in this case. Non-pecuniary loss has also been added at Rs. 25,000/-.

In the ultimate analysis, the award amount cannot be said to be low or inadequate; and there appears no scope or justification for upward revision in this appeal.

The appeal fails and is, therefore, dismissed summarily.

(DINESH MAHESHWARI), J.

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